

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GERALD GATES,

Plaintiff,

-against-

TARGET CORPORATION,

Defendant.

Civil Action No.:
07-CV-11036 (MGC) (DEF)

ANSWER

Cedarbaum, J.
Eaton, M.J.

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Defendant, TARGET CORPORATION ("Target"), by its attorneys, SIMMONS, JANNACE & STAGG, L.L.P., as and for its Answer to the Complaint of plaintiff, responds as follows:

1. Denies in the form alleged the allegations contained in numbered paragraph "1" of the Complaint and leaves all questions of law to the Court.

2. Denies in the form alleged the allegations contained in numbered paragraph "2" of the Complaint and leaves all questions of law to the Court.

3. Denies in the form alleged the allegations contained in numbered paragraph "3" of the Complaint and leaves all questions of law to the Court.

4. Denies in the form alleged the allegations contained in numbered paragraph "4" of the Complaint and leaves all questions of law to the Court.

5. Denies the allegations contained in numbered paragraph "5" of the Complaint.

6. Denies the allegations contained in numbered paragraph "6" of the Complaint.

7. Denies the allegations contained in numbered paragraph "7" of the Complaint.

8. Denies the allegations contained in numbered paragraph "8" of the Complaint.

9. Denies the allegations contained in numbered paragraph "9" of the Complaint.

10. Denies the allegations contained in numbered paragraph "10" of the Complaint.

11. Denies the allegations contained in numbered paragraph "11" of the Complaint.

12. Denies the allegations contained in numbered paragraph "12" of the Complaint.

13. Denies the allegations contained in numbered paragraph "13" of the Complaint.

14. Denies the allegations contained in numbered paragraph "14" of the Complaint.

15. Denies the allegations contained in numbered paragraph "15" of the Complaint.

16. Denies the allegations contained in numbered paragraph "16" of the Complaint.

17. Denies the allegations contained in numbered paragraph "17" of the Complaint.

18. Denies the allegations contained in numbered paragraph "18" of the Complaint.

19. Denies plaintiff is entitled to the relief requested in the "WHEREFORE Clause."

20. Defendant demands that liability, if any, be apportioned.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

21. Plaintiff's Complaint fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

22. Upon information and belief, the injuries allegedly sustained by plaintiff were not as a result of any culpable conduct by the defendant herein, or in the alternative, the amount of damages otherwise recoverable shall be diminished in the percentage proportion of the culpable conduct of plaintiff, which contributed to or caused plaintiff's alleged injuries.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

23. Upon information and belief, plaintiff has not effectuated valid service, pursuant to the CPLR, and therefore, this Court lacks jurisdiction over the person of the defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

24. Upon information and belief, this Court lacks jurisdiction over the subject matter of this action.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

25. The answering defendant herein states that there exists a defense to the causes of action asserted in the Complaint in that plaintiff's Complaint is founded upon documentary evidence.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

26. Upon information and belief, any damages sustained by plaintiff were caused, in whole or in part, by the culpable conduct of plaintiff and/or were aggravated by the culpable conduct of plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

27. If plaintiff proves at trial the existence of a dangerous condition, all of which is denied, upon information and belief, any damages sustained by plaintiff were caused by plaintiff's having voluntarily and unreasonably assumed a known and dangerous risk, and/or the damages were caused by or aggravated by such conduct.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

28. This defendant will rely upon the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

29. Upon information and belief, defendant never received actual or constructive notice of any defective or dangerous condition, and therefore, it cannot be liable for any alleged injuries suffered by plaintiff.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

30. Upon information and belief, if plaintiff suffered any damages as alleged in the Complaint, such damages were as a result of an independent superseding act by a third party for which defendant cannot be held liable, and defendant's conduct was in no way the proximate cause of such damages.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

31. If plaintiff suffered damages as alleged, then plaintiff failed to mitigate such damages

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

32. If plaintiff suffered any damages as a result of a dangerous condition, all of which is specifically denied, the dangerous condition existed as a result of extreme weather which made it impossible for defendant, Target, to remedy the condition.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

33. If plaintiff herein has received remuneration and/or compensation for some or all of his claimed economic loss, or will with reasonable certainty receive remuneration and/or

compensation for said loss in the future, this defendant is entitled to have plaintiff's award, if any, reduced by the amount of said remuneration and/or compensation, pursuant to Section 4545(c) of the CPLR.

WHEREFORE, for all of the foregoing reasons, it is respectfully requested that plaintiff's Complaint be dismissed in its entirety, and that defendant be awarded the costs and disbursements of this action, reasonable attorney's fees, and such other and further relief as this Court may deem just and proper.

Dated: Syosset, New York
December 5, 2007

Yours, etc.,

SIMMONS, JANNACE & STAGG, L.L.P.

By: /s/ Michael D. Kern
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Answer